he was willing to take, did not fix the time when plaintiff was to fix the quantity he desired, the law implied that he had a reasonable time within which to do so.

TRIAL—INSTRUCTIONS.

11. It is not error to refuse instructions stating principles embodied in instructions given.

SOUTH & W. RY. CO. v. COMMONWEALTH ex rel. FLANARY. et als.

September 14, 1905.

[51 S. E. 824.]

APPEAL—QUESTIONS NOT RAISED AT TRIAL—JURISDICTION.

1. An objection that the court had no jurisdiction of the proceeding is available on appeal, though not made in the trial court.

QUO WARRANTO—RIGHT TO PROSECUTE—RAILROADS—CHARTER—NONCOMPLIANCE.

2. Va. Code 1904, pp. 1611, 1612, Secs. 3022-3024, authorize the award of a writ of *quo warranto* against a corporation not municipal for misuse or nonuse of its corporate privileges and franchises, either by the Attorney General or, in case of this refusal, by a private prosecutor; and section 1105e, cl. 30 (page 566), declares that all corporations, whether expiring by limitation or are otherwise dissolved, shall be continued for such length of time as may be necessary for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle their business. *Held*, that section 1313a, cl. 58 (page 733), declaring that if the works of any internal improvement company be not commenced and be completed within the time prescribed by law or by its charter, or if the works be completed and the company abandon them, etc., the state may proceed against such company by writ of *quo warranto*, etc., to forfeit its franchises and sell its property, should be construed as a limitation on the general act, and hence a writ of *quo warranto* on the relation of a private prosecutor could not be maintained to terminate the franchises of a railroad company for failing to construct its road in the time allowed.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Quo Warranto, Secs. 40, 41; vol. 44, Cent. Dig. Statutes, Secs. 302-305.]

BERRY'S EX'X v. FISHBURNE et al.

September 21, 1905.

[51 S. E. 827.]

VENDOR AND PURCHASER—QUANTITY—DEFICIENCY—ABATEMENT OF PRICE.

1. Where the agent of the vendors of certain land, in response to a direct inquiry of the vendee, represented that the tract contained 179 acres of land, and offered to have it surveyed, if desired, and the deed, after

reciting the consideration of $6,200, declared that it conveyed that certain tract or parcel of land containing 17 acres, more or less, etc., the sale was by the acre, and not in gross, so that the vendee was entitled to recover an abatement in the price for a deficiency in the quantity of land.

[Ed. Note.—For cases in point, see vol. 48, Cent. Dig. Vendor and Purchaser, Secs. 95-105, 333.]

ESTOPPEL IN PAIS—SALE OF LAND.

2. In an action by a vendee of land to recover an abatement of the price for a deficiency in quantity, evidence of the vendee's statements at the time certain of the bonds given for the price were assigned *held* insufficient to estop him from claiming such abatement as against the purchasers.

COVENANTS— WARRANTY—BREACH—DEFENSE.

3. Where there was a deficiency in quantity of land sold to plaintiff, the fact that he made certain declarations tending to estop him from claiming a rebate for such deficiency, as against assignees of purchase-money bonds, did not constitute a defense to the vendor's liability for breach of his general covenant of warranty.

SCOTT v. THOMAS et al.
September 14, 1905.

[51 S. E. 829.]

MORTGAGES—DEED OF TRUST—CONSIDERATION—EFFECT.

1. Where a deed of trust, though purporting to have been made in consideration of the beneficiary bank satisfying the lien debts of the grantor and the debts in the bank at that time due and protested against him, further provided that it was made in trust to secure the payment of a negotiable note for the sum of $2,200 payable to the bank, which furnished a valuable consideration for the whole of such note, except a small amount which was indorsed thereon, it was not error for the court in a creditors' suit to refuse to limit the security of the deed to the lien debts satisfied by the bank and its protested notes.

FRAUDULENT CONVEYANCE—INTENT OF DEBTOR.

2. Where, in a suit to set aside a conveyance of a debtor's property for fraud, there was no proof of a real design on the debtor's part to prevent the application of his property to the satisfaction of his debts, but the whole of the property in controversy had been so applied, the conveyance was not fraudulent.

ACKNOWLEDGMENT—DISQUALIFICATION OF NOTARY.

3. That the notary who took the acknowledgment of the grantor of a deed of trust was the employee of the trustee, and for his services as notary was to receive, in addition to his regular salary, the sum of $1.50 out of the money to be raised under the deed, to be paid him by the trustee, did not disqualify him to take the acknowledgment.

[Ed. Note,—For cases in point, seen vol. 1, Cent. Dig. Acknowledgment, Secs. 104, 108.]